

June 22, 1998
L-98-18

Mr. Michael E. Guarisco
Attorney at Law
3770 One Shell Square
701 Poydras Street
New Orleans, Louisiana 70130

In reply refer to
C. 1524-98

Dear Mr. Guarisco:

Your letter of April 24, 1998, addressed to Ms. C. S. of our New Orleans office, has been referred to me for consideration and reply. In your letter you request advice as to the impact on your client's railroad retirement benefits of distributions from corporations of which he is an officer and shareholder.

Deductions for excess earnings under the Railroad Retirement Act are provided for in section 2(f)(1) of the Act (45 U.S.C. § 231a(f)(1)). That section, in so far as relevant to your inquiry, provides that the tier I and vested dual benefit, if payable, components of a railroad retirement annuity are subject to excess earnings in the same manner as if such portions of such annuity were a monthly social security benefit. Furthermore, section 2(f)(6) provides for a deduction in the tier II and supplemental annuity components of \$1 for every \$2 of compensation received by annuitant for work for his last employer prior to retirement, not to exceed 50% of the tier II and supplemental annuity components.

As an officer of various corporations prior to his retirement, remuneration for services performed by your client for these corporations would cause reductions in the tier II and supplemental annuity components for last employer earnings, as described above, and potentially could result in work deductions in the tier I and vested dual benefit, if payable, components, depending on the amount of the earnings. Although dividends received from a

corporation are not earnings for work deduction purposes, the Board may recharacterize dividends or undistributed corporate income as earnings where an individual in a closely held corporation has arranged his affairs to simply avoid the above work deduction provisions.

The following criteria are used to determine whether dividends or retained earnings are disguised earnings: does the annuitant continue to perform services of value for the corporation after retirement; is the annuitant in a position to allocate corporate earnings the way he chooses; if the annuitant "waives" his salary after retirement, is there a change in the allocation of corporate earnings, for example, an increase in dividends; considering all the circumstances, is the annuitant really "retired". As you can see, these factors are highly judgmental, but hopefully they will provide you with sufficient guidance to advise your client.

Very truly yours,

Steven A. Bartholow
Deputy General Counsel

bcc: District Office
New Orleans, Louisiana